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SEP 29 2009

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 25, 2009

John T. Theriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Gary Simmons, et al.***
PCB No. 06-159

Dear Clerk:

Enclosed for filing please find the original and one copy of a Notice of Filing and Supplement to Complainant's Brief Time Use Value of \$118,421.90 in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink that reads "Phillip McQuillan".

Phillip McQuillan
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

PM/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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SEP 29 2009
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
GARY SIMMONS, individually, and)
LAWRENCE COUNTY DISPOSAL)
CENTRE, INC., an Illinois corporation,)
)
Respondents.)

PCB NO. 06-159
(Enforcement)

NOTICE OF FILING

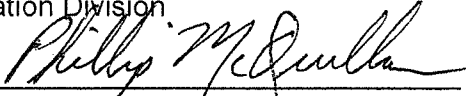
To: Gary Simmons
2101 South Sievers Road
Vincennes, IN 47591

Lawrence County Disposal Centre, Inc.
C/o National Registered Agents, Inc.
200 West Adams Street
Chicago, IL 60606

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a SUPPLEMENT TO COMPLAINANT'S BRIEF TIME USE VALUE OF \$118,421.90, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Phillip McQuillan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 25, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on September 25, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument entitled SUPPLEMENT TO COMPLAINANT'S BRIEF TIME USE VALUE OF \$118,421.90

To: Gary Simmons
2101 South Sievers Road
Vincennes, IN 47591

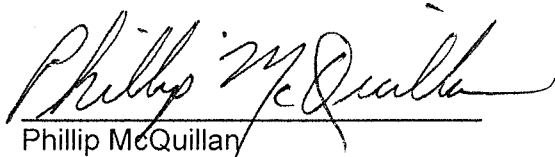
Lawrence County Disposal Centre, Inc.
C/o National Registered Agents, Inc.
200 West Adams Street
Chicago, IL 60606

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument:

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


Phillip McQuillan
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
vs.)
)
GARY SIMMONS, individually, and)
LAWRENCE COUNTY DISPOSAL CENTRE,)
INC., an Illinois corporation,)
)
Respondents.)

No. 06-159
(Enforcement)

SUPPLEMENT TO COMPLAINANT'S BRIEF
TIME USE VALUE OF \$118,421.90

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully tenders the following supplemental arguments in support of an award regarding the time use value of \$118,421.90:

I. Statutory Basis

Section 42(h) of the Act, 415 ILCS 5/42(h) provides, in part:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

* * *

(3) any economic benefits accrued by the respondent because of delay in Compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

At page 45 of Complainant's Brief, Complainant stated:

The Respondents saved approximately \$118,421.90 which are the costs incurred by the Illinois EPA and paid out of the financial assurance bond proceeds which were collected by the Illinois EPA. Complainant submits that Respondents' savings amount to the time uses value of the money over the approximate six year time period. The interest value of this money should be assessed against Respondents as a penalty. The interest should be computed by using the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003. This Board should find that Respondents have saved money as a result of their noncompliance, and these savings should be considered by the Board in reaching its final order and opinion.

In dealing with the time use value of the economic benefits to respondents, Complainant originally believed that interest should be computed by using the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003. Upon further reflection Complainant believes that the time use value of the money saved is more analogous to pre-judgment interest. The Interest Act, 815 ILCS 205/0.01 et seq., at Section 2 states:

Creditors shall be allowed to receive at the rate of five (5) per centum per annum for all monies after they become due on any bond, bill, promissory note, or other instrument of writing; on money lent or advanced for the use of another; on money due on the settlement of account from the day of liquidating accounts between the parties and ascertaining the balance; on money received to the use of another and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment. In the absence of an agreement between the creditor and debtor governing interest charges, upon 30 day's written notice to the debtor, an assignee or agent of the creditor may charge and collect interest as provided in this Section on behalf of a creditor.

ARGUMENT

Section 42(h)(3) of the Act, 415 ILCS 5/42(h)(3), provides a statutory basis for assessing the time use value of money not expended for required maintenance work at Respondent's closed sanitary landfill. The most objective measure of the time use value of the money not expended

(\$118,421.90) is simple interest. Section 2 of the Interest Act, 815 ILCS 205/2, provides that the rate of pre-judgment interest is five (5) percent. Although prejudgment interest could not be awarded at common law, and can only be awarded if there is a statutory basis for such award, see *Wilson v. Cherry*, 244 Ill.App.3d 632, 612 N.E. 2d 953(1993), Section 42(h)(3) of the Act, 415 ILCS 5/42(h)(3) provides a statutory basis for an award herein. Because there was a closure permit and because Respondents received numerous written inspection reports and letters constituting notices of violations, Respondents' failure to perform the maintenance work was unreasonable and vexatious. The Courts grant fairly wide latitude in classifying what constitutes unreasonable and vexatious delay. See *Marcheschi v. Illinois Farmers Insurance Company*, 298 Ill.App.3d 306, 698 N.E.2d 683 (1998).

Interest Computation

On February 27, 2001, Bob Gher, Ambraw Valley Solid Waste Management Agency, sent a Violation Notice, L-2001-LW001, to Respondents. Interest computations should begin 30 days thereafter. By allowing seven days for delivery of the notice, interest should begin 30 days thereafter on April 7, 2001, and should continue until to March 20, 2007. (Environmental Restoration, LLC prepared an invoice with a 30 day net payment term which ended on April 20, 2007.)

Interest from April 7, 2001 to December 31, 2001

Daily interest, Step 1: $\$118,421.90 \times 0.05 = \$5,921.10$ per annum;

Step 2: $\$5,921.10$ divided by 365 days = $\$16.22$ per day.

April 7 to 30, 2001 = 23 times $\$16.22 = \373.06

May 1 to 31, 2001 = 31 times $\$16.22 = 502.82$

June 1 to 30, 2001 = 30 times \$16.22 = 486.60	
July 1 to 31, 2001 = 31 times \$16.22 = 502.82	
August 1 to 31, 2001 = 31 times \$16.22= 502.82	
Sept 1 to 30, 2001 = 30 times \$16.22 = 486.60	
Oct 1 to 31, 2001 = 31 times \$16.22 = 502.82	
Nov 1 to 30, 2001 = 30 times \$16.22 = 486.60	
Dec 1 to 31, 2001 = 31 times \$16.22 = <u>502.82</u>	
Interest for 2001	\$4,346.96
Interest for 2002= \$118,421.90 times 0.05 =	5,921.10
Interest for 2003= \$118,421.90 times 0.05=	5,921.10
Interest for 2004= \$118,421.90 times 0.05=	5,921.10
Interest for 2005= \$118,421.90 times 0.05=	5,921.10
Interest for 2006=\$118,421.90 times 0.05=	5,921.10
Interest for 2007	
Jan 1 to 31, 2007=31 times \$16.22=502.82	
Feb 1 to 28, 2007=28 times \$16.22=454.16	
Mar 1 to 31, 2007=31 times \$16.22=502.82	
April 1 to 20, 2007=20 times \$16.22= <u>324.40</u>	
Interest for 2007	<u>1,784.20</u>
Interest April 7, 2001 to April 20, 2007	\$35,736.66

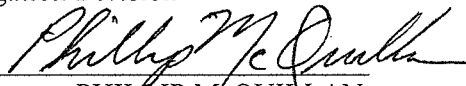
CONCLUSION

Respondents owe the sum of \$35,736.66 for the time use value on \$118,421.90 for Respondents' unreasonable and vexatious delay in performing maintenance work at Respondents' closed sanitary landfill. Claimant requests that ten percent of this sum be assessed against Respondent Gary Simmons and ninety percent of this sum be assessed against Respondent Lawrence County Disposal Centre, Inc.

Respectfully submitted,

~~PEOPLE OF THE STATE OF ILLINOIS,~~
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
PHILLIP McQUILLAN
Assistant Attorney General
Environmental Bureau

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